



DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
Public Safety Services



M. J. "MIKE" FOSTER, JR.
GOVERNOR

V. J. BELLA
STATE FIRE MARSHAL

April 20, 1999

Mr. Donald W. Clayton, P.E.
ACEC Consulting Engineers
Council of Louisiana
P.O. Box 1549
Baton Rouge, LA 70821-1549

RE: Louisiana Commercial Building Energy Conservation Code

Dear Mr. Clayton:

I am in receipt of your letter dated April 12, 1999 in which you have raised a concern regarding the legal responsibility of design professionals to comply with the requirements of the Louisiana Commercial Building Energy Conservation Code.

The Energy Policy Act of 1990, required states to certify to the Department of Energy that their Energy Conservation Code was equivalent to the Model Energy Code. Louisiana could not make such a certification due to the fact that no energy code was adopted in the state. In response to those concerns the Department of Natural Resources had introduced a bill adopting a Louisiana Energy Conservation Code which has been declared equivalent to the Model Energy Code. Therefore, the state is now able to provide the certifications mandated by the energy policy act. The state law requires the Fire Marshal to serve as the reviewing agency for compliance with the adopted energy code. Our review is for compliance. The ramification for failure to comply with the Energy Code is a letter from our office indicating that the facility does not appear to comply with the state's adopted Energy Code. You have raised a serious question. **"Does the fact that the official reviewing agency for the state does not require compliance by the design professional, relieve the design professional from legal consequences that may be related to non compliance?"**

As the Deputy Assistant Secretary/Chief Architect for the Office of the State Fire Marshal, Code Enforcement, and Building Safety, I am not in a position to render an officially binding legal interpretation with respect to professional liability. That is an issue that you may want to discuss with legal counsel. However, I will provide you with my personal opinion. The fact is the state has officially adopted an Energy Code for the state of Louisiana. In my opinion, an owner could in turn hold a design professional responsible for failure to comply with the Energy Code. In other words, if a building owner did not consciously make a decision to allow his facility to be designed in violation of the Energy Code and that decision was not rendered in writing, the owner could then hold the design professional responsible for failure to design in compliance with an adopted standard. Even though the state did not provide the Fire Marshal's

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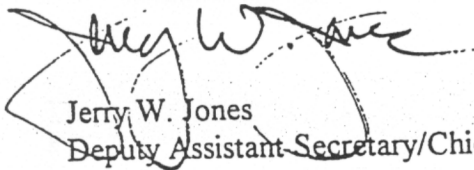
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Office with statutory enforcement authority, a design professional could potentially still be held liable to an owner for failure to design in conformance with the adopted standard.

At the present time, all that is required is formal submission for Energy Code Review. This is mandatory under the state law. Buildings subject to Energy Code compliance review must be submitted for review utilizing the adopted compliance programs and forms necessary to evaluate a facility for compliance with the state's adopted Energy Code.

As previously stated the opinion expressed above is my personal opinion and should not be considered a legal opinion. You may want to discuss this matter further with legal counsel who would be in a better position to render a legal opinion regarding this matter. If you should have further questions or would like to discuss this matter further, please feel free to contact this office.

Sincerely,



Jerry W. Jones
Deputy Assistant Secretary/Chief Architect

JWJ/dl

cc: V. J. Bella
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